

29 July 1971

MEMORANDUM FOR: Mr. Houston

SUBJECT:                   Congressman Ogden R. Reid's Statements  
                              Concerning Violations of the Geneva  
                              Convention

1. Congressman Ogden R. Reid's (R-N.Y.) criticisms of U.S. support for the Phoenix Program in South Vietnam were aired in an article in the 16 July 1971 issue of The New York Times. The Phoenix Program is identified in this article as a counter-insurgency program in South Vietnam, financed by the United States primarily with Defense Department and Agency funds. Its purpose is to "combat the effect of underground Vietcong operations in South Vietnam." At a House Government Subcommittee meeting on 15 July, Mr. Reid charged that many if not most of the Vietnamese Communists killed through this program are actually victims of "planned murders of civilians in violation of the Geneva convention" and that:

A great number of Vietcong, while insurgents, are nevertheless civilians, and thus specifically protected from assassination under the Geneva convention relative to the protection of civilian persons in time of war.

2. A reading of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, \* does not indicate that "insurgents" are among the "protected persons" under this Convention. Furthermore, there is nothing in this Convention to suggest there are limits on the power of a State to deal with its resident citizens who are engaged in promoting the overthrow of the State. A State need not refrain from action against even protected persons, if failure to take action would prejudice State security.

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\*U.S. Department of State Publication 3938, General Foreign Policy Series 34, August 1950.

3. Article 2 states that this Convention applies to

...all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them,

and to

all cases of partial or total occupation of the territory of a High Contracting Power, even if said occupation meets with no armed resistance.

Civilian "protected persons" are specified in Articles 3 and 4. Article 4 states:

Persons protected by this convention are those who...find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals.

This Article also excludes from protection:

Nationals of a State which is not bound by the convention.... Nationals of a Neutral State... and nationals of a co-belligerent State, ...while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

Article 3 may be interpreted as being applicable to cases of insurgency or rebellion, which are aided by an outside Power, but it protects only those citizens of the State who either are not disrupting or who cease to disrupt domestic tranquility.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply...the following provisions:

(1) Persons taking no active part in hostilities including members of the armed forces who have laid down their arms and those placed hors de combat...shall in all circumstances be treated humanely... .

To this end, the following acts are and shall remain prohibited at any time and in any place...with respect to the above mentioned persons (emphasis added):

(a) violence to life and person, in particular murder of all kinds, ...

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

4. This Convention curtails the rights even of the "protected persons" under certain circumstances. Article 5 states that:

Where in the territory of a Party to the conflict, the latter is satisfied that an individually protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favor of such individual person, be prejudicial to the security of such State.

In addition, Article 27 of this Convention states that:

Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

5. Other provisions of this Convention, specifically those articles which deal with the General Protection of Populations Against Certain Consequences of War are wider in application and are intended to alleviate the suffering of the general civilian population caused by war. There is no mention in these articles, however, of any humanitarian duties owed by a State to its citizens definitely suspected of or engaged in activities detrimental to the security of the State.

6. It is clear from the above that those civilians who are citizens of a State and who actively promote or seek to undermine the security of the State are not protected by this Convention from reprisals by the State. Those persons referred to in Articles 3 and 4 as "protected persons," and whose protection is partially revoked by Articles 5 and 27, have never knowingly been the targets of the Phoenix Program. This program is directed only at those persons taking an active role against the Government of the Republic of South Vietnam in support of the Vietnamese Communists. The Phoenix Program is designed to capture and incarcerate these persons and to promote their defection to the Government.



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